

Exhibit 1

Accusation No. CC-2008-97
Statement to Respondent, Notice of Defense (2 Copies), Request
for Discovery, Government Code sections 11507, 11507.6,
11507.7, proof of service; and if applicable, mail receipt or copy of
returned mail envelopes

Exhibit A

Accusation

**BEFORE THE
STATE BOARD OF OPTOMETRY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

TINA DIANE METCALF
18649 Via Princessa
Santa Clarita, CA 91387

Optometry License No. OPT 11705

Respondent.

Case No. CC-2008-97

**DEFAULT DECISION INVESTIGATORY
EVIDENCE PACKET**

[Gov. Code §11520]

The Default Decision Investigatory Evidence Packet in support of the Default Decision and Order in the above entitled matter consists of the following.

Exhibit 1: Pleadings offered for jurisdictional purposes: Accusation No. CC-2008-97, Statement to Respondent, Notice of Defense (2 Copies), Request for Discovery, Government Code sections 11507, 11507.6, 11507.7, and proof of service; and if applicable, mail receipt or copy of returned mail envelopes;

Exhibit 2: License History Certification for Tina Diane Metcalf Optometry License No. OPT 11705; and

Exhibit 3: Certification of Costs by Board for Investigation and Enforcement in Case No. CC-2008-97 dated January 19, 2011.

Dated: January 20, 2011

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
GLORIA A. BARRIOS
Supervising Deputy Attorney General



MICHEL W. VALENTINE
Deputy Attorney General
Attorneys for Complainant

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6 **BEFORE THE**
7 **STATE BOARD OF OPTOMETRY**
8 **DEPARTMENT OF CONSUMER AFFAIRS**
9 **STATE OF CALIFORNIA**

10 In the Matter of the Accusation Against:

Case No. CC-2008-97

11 **TINA DIANE METCALF**

DEFAULT DECISION AND ORDER

12 18649 Via Princessa
13 Santa Clarita, CA 91387

[Gov. Code, §11520]

Optometry License No. OPT 11705

Respondent.

14 **FINDINGS OF FACT**

15 1. On or about September 7, 2010, Complainant Mona Maggio, in her official capacity
16 as the Executive Officer of the State Board of Optometry, Department of Consumer Affairs, filed
17 Accusation No. CC-2008-97 against Tina Diane Metcalf (Respondent) before the State Board of
18 Optometry. (Accusation attached as Exhibit A.)

19 2. On or about August 1, 2001, the State Board of Optometry (Board) issued Optometry
20 License No. OPT 11705 to Respondent. The Optometry License expired on February 28, 2003,
21 and was renewed on September 26, 2003. The current license relevant to the charges brought
22 herein will expire on February 28, 2011, unless renewed.

23 3. On or about September 16, 2010, Respondent was served by certified mail and first
24 class mail copies of the Accusation No. CC-2008-97, Statement to Respondent, Notice of
25 Defense (2 Copies), Request for Discovery, Government Code sections 11507, 11507.6, and
26 11507.7, at Respondent's address of record which, pursuant to Business and Professions Code
27 section 136 and/or agency specific statute or regulation, is required to be reported and maintained
28 with the Board, which was and is: 18649 Via Princessa, Santa Clarita, CA 91387.

1 4. Service of the Accusation was effective as a matter of law under the provisions of
2 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
3 124.

4 5. On or about October 4, 2010, the aforementioned documents served by certified mail
5 were returned by the U.S. Postal Service marked "Insufficient Address - Not deliverable as
6 addressed, unable to forward." On or about October 5, 2010, the aforementioned documents
7 served by first class mail were returned by the U.S. Postal Service marked "Not deliverable as
8 addressed, unable to forward."

9 6. Government Code section 11506, subdivision (c) states:

10 "The respondent shall be entitled to a hearing on the merits if the respondent files a notice
11 of defense, and the notice shall be deemed a specific denial of all parts of the accusation not
12 expressly admitted. Failure to file a notice of defense shall constitute a waiver of respondent's
13 right to a hearing, but the agency in its discretion may nevertheless grant a hearing."

14 7. Respondent failed to file a Notice of Defense within 15 days after service upon her of
15 the Accusation, and therefore waived her right to a hearing on the merits of Accusation No.
16 CC-2008-97.

17 8. Government Code section 11520, subdivision (a) states:

18 "If the respondent either fails to file a notice of defense or to appear at the hearing, the
19 agency may take action based upon the respondent's express admissions or upon other evidence
20 and affidavits may be used as evidence without any notice to respondent."

21 9. Pursuant to its authority under Government Code section 11520, the Board finds
22 Respondent is in default. The Board will take action without further hearing and, based on the
23 relevant evidence contained in the Default Decision Investigatory Evidence Packet in this matter,
24 as well as taking official notice of all the investigatory reports, exhibits and statements contained
25 therein on file at the Board's offices regarding the allegations contained in Accusation No.
26 CC-2008-97, finds that the charges and allegations in Accusation No. CC-2008-97, are separately
27 and severally true and correct by clear and convincing evidence.

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10. Taking official notice of its own internal records, pursuant to Business and Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation and Enforcement is \$4,450.00, as of January 19, 2011.

DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Tina Diane Metcalf has subjected her Optometry License No. OPT 11705 to discipline.

2. The agency has jurisdiction to adjudicate this case by default.

3. The State Board of Optometry is authorized to revoke Respondent's Optometry License based upon the following violations alleged in the Accusation which are supported by the evidence contained in the Default Decision Investigatory Evidence Packet in this case.:

a. Business and Professions Code section 3110, subdivision (k) and 490 - Convictions of Substantially Related Crimes;

b. Business and Professions Code section 3110, subdivision (k) – Convictions Involving Unlawful Consumption of Alcohol; and

c. Business and Professions Code section 3110, subdivision (l) – Unprofessional Conduct/Dangerous Use of Alcoholic Beverages.

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ORDER

IT IS SO ORDERED that Optometry License No. OPT 11705, heretofore issued to Respondent Tina Diane Metcalf, is revoked.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective on April 7, 2011.

It is so ORDERED March 8, 2011



FOR THE STATE BOARD OF OPTOMETRY
DEPARTMENT OF CONSUMER AFFAIRS

Attachment:
Exhibit A: Accusation

60603638.DOCX
DOJ Matter ID:LA2010600296
jz(1/20/11)

ORDER

IT IS SO ORDERED that Optometry License No. OPT 11705, heretofore issued to Respondent Tina Diane Metcalf, is revoked.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective on April 7, 2011.

It is so ORDERED March 8, 2011



FOR THE STATE BOARD OF OPTOMETRY
DEPARTMENT OF CONSUMER AFFAIRS

Attachment:
Exhibit A: Accusation

60603638.DOCX
DOJ Matter ID:LA2010600296
jz(1/20/11)

1 EDMUND G. BROWN JR.
Attorney General of California
2 GLORIA A. BARRIOS
Supervising Deputy Attorney General
3 MICHEL W. VALENTINE
Supervising Deputy Attorney General
4 State Bar No. 153078
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-1034
6 Facsimile: (213) 897-2804

7 *Attorneys for Complainant*

8 **BEFORE THE**
9 **STATE BOARD OF OPTOMETRY**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. CC-2008-97

13 **TINA DIANE METCALF**
18649 Via Princessa
Santa Clarita, CA 91387

A C C U S A T I O N

14 **Optometry License No. OPT 11705**

15 Respondent.

16
17
18 Complainant alleges:

19 **PARTIES**

20 1. Mona Maggio (Complainant) brings this Accusation solely in her official capacity as
21 the Executive Officer of the State Board of Optometry, Department of Consumer Affairs.

22 2. On or about August 1, 2001, the State Board of Optometry (Board) issued Optometry
23 License No. OPT 11705 to Tina Diane Metcalf (Respondent). The Optometry License expired on
24 February 28, 2003 but was renewed on September 26, 2003 and was in full force and effect at all
25 times except for this period. The Respondent's Optometry license will expire on February 28,
26 2011 unless renewed.

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28 ///

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8 **BEFORE THE**
9 **STATE BOARD OF OPTOMETRY**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. CC-2008-97

13 **TINA DIANE METCALF**
18649 Via Princessa
Santa Clarita, CA 91387

A C C U S A T I O N

14 **Optometry License No. OPT 11705**

15 Respondent.

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18 Complainant alleges:

19 **PARTIES**

20 1. Mona Maggio (Complainant) brings this Accusation solely in her official capacity as
21 the Executive Officer of the State Board of Optometry, Department of Consumer Affairs.

22 2. On or about August 1, 2001, the State Board of Optometry (Board) issued Optometry
23 License No. OPT 11705 to Tina Diane Metcalf (Respondent). The Optometry License expired on
24 February 28, 2003 but was renewed on September 26, 2003 and was in full force and effect at all
25 times except for this period. The Respondent's Optometry license will expire on February 28,
26 2011 unless renewed.

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1 public, other licensees, health care facilities, other licensing agencies, or any other source
2 suggesting that an optometrist may be guilty of violating this chapter or any of the regulations
3 adopted by the board."

4 7. Section 3110 states:

5 "The Board may take action against any license that is charged with unprofessional
6 conduct, and may deny an application for a license if the applicant has committed unprofessional
7 conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not
8 limited to, the following:

9

10 "(k) Conviction of a felony or of any offense substantially related to the qualifications,
11 functions, and duties of an optometrist, in which event the record of the conviction shall be
12 conclusive evidence thereof.

13 "(l) Administering to himself or herself any controlled substance or using any of the
14 dangerous drugs specified in Section 4022, or using alcoholic beverages to the extent, or in a
15 manner, as to be dangerous or injurious to the person applying for a license or holding a license
16 under this chapter, or to any other person, or to the public, or, to the extent that the use impairs
17 the ability of the person applying for or holding a license to conduct with safety to the public the
18 practice authorized by the license, or the conviction of a misdemeanor or felony involving the
19 use, consumption, or self administration of any of the substances referred to in this subdivision, or
20 any combination thereof."

21 COST RECOVERY

22 8. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
23 administrative law judge to direct a licentiate found to have committed a violation or violations of
24 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
25 enforcement of the case.

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1 incorporates, the allegations set forth above in paragraph 9, subparagraphs (a) and (b), as though
2 set forth fully herein.

3 **THIRD CAUSE FOR DISCIPLINE**

4 **(Unprofessional Conduct/Dangerous Use of Alcoholic Beverages)**

5 11. Respondent is subject to disciplinary action under section 3110, subdivision (l), in
6 that on June 22, 2008 and April 15, 2007, Respondent committed acts constituting unprofessional
7 conduct by using alcoholic beverages to an extent or in a manner dangerous to herself, other
8 persons, or the public or to the extent that such use of alcoholic beverages impaired her ability to
9 conduct with safety to the public the practice authorized by her license. Complainant refers to,
10 and by this reference incorporates, the allegations set

11 forth above in paragraph 9, subparagraphs (a) and (b), as though set forth fully herein.

12 **PRAYER**

13 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
14 and that following the hearing, the Board issue a decision:

- 15 1. Revoking or suspending Optometry License No. OPT 11705, issued Respondent;
16 2. Ordering Respondent to pay the Board the reasonable costs of the investigation and
17 enforcement of this case, pursuant to Business and Professions Code section 125.3; and
18 3. Taking such other and further action as deemed necessary and proper.

19 DATED: September 7, 2010

20 

21 MONA MAGGIO
22 Executive Officer
23 State Board of Optometry
24 Department of Consumer Affairs
25 State of California
26 Complainant

24 LA2010600296
25 60536794.doc
26 St(5-12-10)

JURISDICTION

3. This Accusation is brought before the Board, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

STATUTORY PROVISIONS

4. Section 118, subdivision (b), of the Code provides that the suspension, expiration, surrender or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

5. Section 490 states:

"(a) In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

"(b) Notwithstanding any other provision of law, a board may exercise any authority to discipline a licensee for conviction of a crime that is independent of the authority granted under subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the licensee's license was issued.

"(c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code."

6. Section 3090 states:

"Except as otherwise provided by law, the board may take action against all persons guilty of violating this chapter or any of the regulations adopted by the board. The board shall enforce and administer this article as to license holders, and the board shall have all the powers granted in this chapter for these purposes, including, but not limited to, investigating complaints from the

1 public, other licensees, health care facilities, other licensing agencies, or any other source
2 suggesting that an optometrist may be guilty of violating this chapter or any of the regulations
3 adopted by the board."

4 7. Section 3110 states:

5 "The Board may take action against any license that is charged with unprofessional
6 conduct, and may deny an application for a license if the applicant has committed unprofessional
7 conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not
8 limited to, the following:

9

10 "(k) Conviction of a felony or of any offense substantially related to the qualifications,
11 functions, and duties of an optometrist, in which event the record of the conviction shall be
12 conclusive evidence thereof.

13 "(l) Administering to himself or herself any controlled substance or using any of the
14 dangerous drugs specified in Section 4022, or using alcoholic beverages to the extent, or in a
15 manner, as to be dangerous or injurious to the person applying for a license or holding a license
16 under this chapter, or to any other person, or to the public, or, to the extent that the use impairs
17 the ability of the person applying for or holding a license to conduct with safety to the public the
18 practice authorized by the license, or the conviction of a misdemeanor or felony involving the
19 use, consumption, or self administration of any of the substances referred to in this subdivision, or
20 any combination thereof."

21 COST RECOVERY

22 8. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
23 administrative law judge to direct a licensee found to have committed a violation or violations of
24 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
25 enforcement of the case.

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1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Criminal Convictions)**

3 9. Respondent is subject to disciplinary action under section 490, subdivision (c) and
4 section 3110, subdivision (k), in that Respondent has been convicted of crimes substantially
5 related to the qualifications, functions or duties of a licensed optometrist as follows:

6 a. On or about January 12, 2009, after pleading nolo contendere, Respondent was
7 convicted of one misdemeanor count of violating Vehicle Code section 23152, subdivision (b)
8 [driving while having 0.8% and more, of alcohol in her blood], in the criminal proceeding entitled
9 *The People of the State of California v. Tina Diane Metcalf* (Super. Ct. Los Angeles County,
10 2009, No. MA043200). The Court sentenced Respondent to 5 days in jail and placed her on
11 probation for a period of 60 months with certain terms and conditions. The circumstances
12 surrounding the conviction are that on or about June 22, 2008, the California Highway Patrol
13 arrested Respondent for driving under the influence of an alcohol beverage and causing a
14 collision which resulted in a passenger being injured in the collision.

15 b. On or about August 29, 2007, after pleading nolo contendere, Respondent was
16 convicted of one misdemeanor count of violating Vehicle Code section 23152, subdivision (b)
17 [driving while having 0.8% and more, of alcohol in her blood], in the criminal proceeding entitled
18 *The People of the State of California v. Tina Diane Metcalf* (Super. Ct., County of Los Angeles,
19 2007, No. 7NW02172). The Court sentenced Respondent to 13 days in jail and placed her on
20 probation for a period of 36 months with certain terms and conditions. The circumstances
21 surrounding the conviction are that on or about April 15, 2007, the Los Angeles Sheriff's
22 Department arrested Respondent for driving under the influence of an alcoholic beverage and that
23 her continued operation of a motor vehicle would be unsafe.

24 **SECOND CAUSE FOR DISCIPLINE**

25 **(Convictions Involving Unlawful Consumption of Alcohol)**

26 10. Respondent is subject to disciplinary action under section 3110, subdivision (k), in
27 that on or about August 29, 2007 and January 12, 2009, Respondent was convicted of crimes
28 involving unlawful consumption of alcohol. Complainant refers to, and by this reference

1 incorporates, the allegations set forth above in paragraph 9, subparagraphs (a) and (b), as though
2 set forth fully herein.

3 **THIRD CAUSE FOR DISCIPLINE**

4 **(Unprofessional Conduct/Dangerous Use of Alcoholic Beverages)**


5 11. Respondent is subject to disciplinary action under section 3110, subdivision (l), in
6 that on June 22, 2008 and April 15, 2007, Respondent committed acts constituting unprofessional
7 conduct by using alcoholic beverages to an extent or in a manner dangerous to herself, other
8 persons, or the public or to the extent that such use of alcoholic beverages impaired her ability to
9 conduct with safety to the public the practice authorized by her license. Complainant refers to,
10 and by this reference incorporates, the allegations set
11 forth above in paragraph 9, subparagraphs (a) and (b), as though set forth fully herein.

12 **PRAYER**

13 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
14 and that following the hearing, the Board issue a decision:

- 15 1. Revoking or suspending Optometry License No. OPT 11705, issued Respondent;
16 2. Ordering Respondent to pay the Board the reasonable costs of the investigation and
17 enforcement of this case, pursuant to Business and Professions Code section 125.3; and
18 3. Taking such other and further action as deemed necessary and proper.

19
20 DATED: September 7, 2010


21 MONA MAGGIO
22 Executive Officer
23 State Board of Optometry
24 Department of Consumer Affairs
25 State of California
26 Complainant

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Attorneys for Complainant

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8 **BEFORE THE**
STATE BOARD OF OPTOMETRY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. CC-2008-97

11 **TINA DIANE METCALF**

STATEMENT TO RESPONDENT

12 Respondent.

[Gov. Code §§ 11504, 11505(b)]

13
14 **TO RESPONDENT:**

15 Enclosed is a copy of the Accusation that has been filed with the State Board of Optometry
16 of the Department of Consumer Affairs (Board), and which is hereby served on you.

17 Unless a written request for a hearing signed by you or on your behalf is delivered or
18 mailed to the Board, represented by Deputy Attorney General Michel W. Valentine, within fifteen
19 (15) days after a copy of the Accusation was personally served on you or mailed to you, you will
20 be deemed to have waived your right to a hearing in this matter and the Board may proceed upon
21 the Accusation without a hearing and may take action thereon as provided by law.

22 The request for hearing may be made by delivering or mailing one of the enclosed forms
23 entitled "Notice of Defense," or by delivering or mailing a Notice of Defense as provided in
24 section 11506 of the Government Code, to

25
26 **Michel W. Valentine**
Deputy Attorney General
Ronald Reagan Building
27 **300 South Spring Street, Suite 1702**
Los Angeles, CA 90013
28

1 You may, but need not, be represented by counsel at any or all stages of these proceedings.

2 The enclosed Notice of Defense, if signed and filed with the Board, shall be deemed a
3 specific denial of all parts of the Accusation, but you will not be permitted to raise any objection
4 to the form of the Accusation unless you file a further Notice of Defense as provided in section
5 11506 of the Government Code within fifteen (15) days after service of the Accusation on you.

6 If you file any Notice of Defense within the time permitted, a hearing will be held on the
7 charges made in the Accusation.

8 The hearing may be postponed for good cause. If you have good cause, you are obliged to
9 notify the Office of Administrative Hearings, 320 West Fourth Street, Suite 630, Los Angeles,
10 CA 90013, within ten (10) working days after you discover the good cause. Failure to notify the
11 Office of Administrative Hearings within ten (10) days will deprive you of a postponement.

12 Copies of sections 11507.5, 11507.6, and 11507.7 of the Government Code are enclosed.

13 If you desire the names and addresses of witnesses or an opportunity to inspect and copy
14 the items mentioned in section 11507.6 of the Government Code in the possession, custody or
15 control of the Board you may send a Request for Discovery to the above designated Deputy
16 Attorney General.

17 **NOTICE REGARDING STIPULATED SETTLEMENTS**

18 It may be possible to avoid the time, expense and uncertainties involved in an
19 administrative hearing by disposing of this matter through a stipulated settlement. A stipulated
20 settlement is a binding written agreement between you and the government regarding the matters
21 charged and the discipline to be imposed. Such a stipulation would have to be approved by the
22 State Board of Optometry but, once approved, it would be incorporated into a final order.

23 Any stipulation must be consistent with the Board's established disciplinary guidelines;
24 however, all matters in mitigation or aggravation will be considered. A copy of the Board's
25 Disciplinary Guidelines will be provided to you on your written request to the state agency
26 bringing this action.

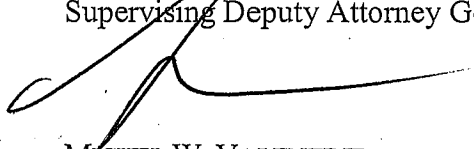
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1 If you are interested in pursuing this alternative to a formal administrative hearing, or if you
2 have any questions, you or your attorney should contact Deputy Attorney General Michel W.
3 Valentine at the earliest opportunity.

4
5 Dated: September 16, 2010

EDMUND G. BROWN JR.
Attorney General of California
GLORIA A. BARRIOS
Supervising Deputy Attorney General

7
8 
9 MICHEL W. VALENTINE
Deputy Attorney General
Attorneys for Complainant

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**BEFORE THE
STATE BOARD OF OPTOMETRY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. CC-2008-97

TINA DIANE METCALF

Respondent.

NOTICE OF DEFENSE

[Gov. Code §§ 11505 and 11506]

I, the undersigned Respondent in the above-entitled proceeding, hereby acknowledge receipt of a copy of the Accusation; Statement to Respondent; Government Code sections 11507.5, 11507.6 and 11507.7, Complainant's Request for Discovery; and two copies of a Notice of Defense.

I hereby request a hearing to permit me to present my defense to the charges contained in the Accusation.

Dated: _____

Respondent's Name: _____

Respondent's Signature: _____

Respondent's Mailing
Address: _____

City, State and Zip Code: _____

Respondent's Telephone: _____

Check appropriate box:

- ☐ I am represented by counsel, whose name, address and telephone number appear below:

Counsel's Name _____

Counsel's Mailing Address _____

City, State and Zip Code _____

Counsel's Telephone Number _____

- ☐ I am not now represented by counsel. If and when counsel is retained, immediate notification of the attorney's name, address and telephone number will be filed with the Office of Administrative Hearing and a copy sent to counsel for Complainant so that counsel will be on record to receive legal notices, pleadings and other papers.

The agency taking the action described in the Accusation may have formulated guidelines to assist the administrative law judge in reaching an appropriate penalty. You may obtain a copy of the guidelines by requesting them from the agency in writing.

LA2010600296
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**BEFORE THE
STATE BOARD OF OPTOMETRY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

TINA DIANE METCALF

Respondent.

Case No. CC-2008-97

NOTICE OF DEFENSE

[Gov. Code §§ 11505 and 11506]

I, the undersigned Respondent in the above-entitled proceeding, hereby acknowledge receipt of a copy of the Accusation; Statement to Respondent; Government Code sections 11507.5, 11507.6 and 11507.7, Complainant's Request for Discovery; and two copies of a Notice of Defense.

I hereby request a hearing to permit me to present my defense to the charges contained in the Accusation.

Dated: _____

Respondent's Name: _____

Respondent's Signature: _____

Respondent's Mailing
Address: _____

City, State and Zip Code: _____

Respondent's Telephone: _____

Check appropriate box:

- ☐ I am represented by counsel, whose name, address and telephone number appear below:

Counsel's Name _____

Counsel's Mailing Address _____

City, State and Zip Code _____

Counsel's Telephone Number _____

- ☐ I am not now represented by counsel. If and when counsel is retained, immediate notification of the attorney's name, address and telephone number will be filed with the Office of Administrative Hearing and a copy sent to counsel for Complainant so that counsel will be on record to receive legal notices, pleadings and other papers.

The agency taking the action described in the Accusation may have formulated guidelines to assist the administrative law judge in reaching an appropriate penalty. You may obtain a copy of the guidelines by requesting them from the agency in writing.

LA2010600296
60556719.DOC

1 EDMUND G. BROWN JR.
Attorney General of California
2 GLORIA A. BARRIOS
Supervising Deputy Attorney General
3 MICHEL W. VALENTINE
Deputy Attorney General
4 State Bar No. 153078
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-1034
6 Facsimile: (213) 897-2804
Attorneys for Complainant

7
8 **BEFORE THE**
STATE BOARD OF OPTOMETRY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. CC-2008-97

11 TINA DIANE METCALF

REQUEST FOR DISCOVERY

12 Respondent.
13

14 TO RESPONDENT:

15 Under section 11507.6 of the Government Code of the State of California, parties to an
16 administrative hearing, including the Complainant, are entitled to certain information concerning
17 the opposing party's case. A copy of the provisions of section 11507.6 of the Government Code
18 concerning such rights is included among the papers served.
19

20 PURSUANT TO SECTION 11507.6 OF THE GOVERNMENT CODE, YOU ARE
21 HEREBY REQUESTED TO:

22 1. Provide the names and addresses of witnesses to the extent known to the Respondent,
23 including, but not limited to, those intended to be called to testify at the hearing, and

24 2. Provide an opportunity for the Complainant to inspect and make a copy of any of the
25 following in the possession or custody or under control of the Respondent:

26 a. A statement of a person, other than the Respondent, named in the initial
27 administrative pleading, or in any additional pleading, when it is claimed that the act or
28 omission of the Respondent as to this person is the basis for the administrative proceeding;

1 b. A statement pertaining to the subject matter of the proceeding made by
2 any party to another party or persons;

3 c. Statements of witnesses then proposed to be called by the Respondent and
4 of other persons having personal knowledge of the acts, omissions or events which are the
5 basis for the proceeding, not included in (a) or (b) above;

6 d. All writings, including but not limited to reports of mental, physical and
7 blood examinations and things which the Respondent now proposes to offer in evidence;

8 e. Any other writing or thing which is relevant and which would be
9 admissible in evidence, including but not limited to, any patient or hospital records
10 pertaining to the persons named in the pleading;

11 f. Investigative reports made by or on behalf of the Respondent pertaining
12 to the subject matter of the proceeding, to the extent that these reports (1) contain the names
13 and addresses of witnesses or of persons having personal knowledge of the acts, omissions
14 or events which are the basis for the proceeding, or (2) reflect matters perceived by the
15 investigator in the course of his or her investigation, or (3) contain or include by attachment
16 any statement or writing described in (a) to (e), inclusive, or summary thereof.

17 For the purpose of this Request for Discovery, "statements" include written statements by
18 the person, signed, or otherwise authenticated by him or her, stenographic, mechanical, electrical
19 or other recordings, or transcripts thereof, of oral statements by the person, and written reports or
20 summaries of these oral statements.

21 YOU ARE HEREBY FURTHER NOTIFIED that nothing in this Request for Discovery
22 should be deemed to authorize the inspection or copying of any writing or thing which is
23 privileged from disclosure by law or otherwise made confidential or protected as attorney's work
24 product.


25 Your response to this Request for Discovery should be directed to the undersigned attorney
26 for the Complainant at the address on the first page of this Request for Discovery within 30 days
27 after service of the Accusation.

28 ///

1 Failure without substantial justification to comply with this Request for Discovery may
2 subject the Respondent to sanctions pursuant to sections 11507.7 and 11455.10 to 11455.30 of the
3 Government Code.

4
5 Dated: September 16, 2010

EDMUND G. BROWN JR.
Attorney General of California
GLORIA A. BARRIOS
Supervising Deputy Attorney General

7
8 
9 MICHEL W. VALENTINE
Deputy Attorney General
Attorneys for Complainant

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COPY OF GOVERNMENT CODE SECTIONS 11507.5, 11507.6 AND 11507.7
PROVIDED PURSUANT TO GOVERNMENT CODE SECTIONS 11504 AND 11505

SECTION 11507.5: Exclusivity of discovery provisions

The provisions of Section 11507.6 provide the exclusive right to and method of discovery as to any proceeding governed by this chapter.

SECTION 11507.6: Request for discovery

After initiation of a proceeding in which a respondent or other party is entitled to a hearing on the merits, a party, upon written request made to another party, prior to the hearing and within 30 days after service by the agency of the initial pleading or within 15 days after the service of an additional pleading, is entitled to (1) obtain the names and addresses of witnesses to the extent known to the other party, including, but not limited to, those intended to be called to testify at the hearing, and (2) inspect and make a copy of any of the following in the possession or custody or under the control of the other party:

(a) A statement of a person, other than the respondent, named in the initial administrative pleading, or in any additional pleading, when it is claimed that the act or omission of the respondent as to this person is the basis for the administrative proceeding;

(b) A statement pertaining to the subject matter of the proceeding made by any party to another party or person;

(c) Statements of witnesses then proposed to be called by the party and of other persons having personal knowledge of the acts, omissions or events which are the basis for the proceeding, not included in (a) or (b) above;

(d) All writings, including, but not limited to, reports of mental, physical and blood examinations and things which the party then proposes to offer in evidence;

(e) Any other writing or thing which is relevant and which would be admissible in evidence;

(f) Investigative reports made by or on behalf of the agency or other party pertaining to the subject matter of the proceeding, to the extent that these reports (1) contain the names and addresses of witnesses or of persons having personal knowledge of the acts, omissions or events which are the basis for the proceeding, or (2) reflect matters perceived by the investigator in the course of his or her investigation, or (3) contain or include by attachment any statement or writing described in (a) to (e), inclusive, or summary thereof.

For the purpose of this section, "statements" include written statements by the person signed or otherwise authenticated by him or her, stenographic, mechanical, electrical or other recordings, or transcripts thereof, of oral statements by the person, and written reports or summaries of these oral statements.

Nothing in this section shall authorize the inspection or copying of any writing or thing which is privileged from disclosure by law or otherwise made confidential or protected as the attorney's work product.

SECTION 11507.7: Petition to compel discovery; Order; Sanctions

(a) Any party claiming the party's request for discovery pursuant to Section 11507.6 has not been complied with may serve and file with the administrative law judge a motion to compel discovery, naming as respondent the party refusing or failing to comply with Section 11507.6. The motion shall state facts showing the respondent party failed or refused to comply with Section 11507.6, a description of the matters sought to be discovered, the reason or reasons why the matter is discoverable under that section, that a reasonable and good faith attempt to contact the respondent for an informal resolution of the issue has been made, and the ground or grounds of respondent's refusal so far as known to the moving party.

(b) The motion shall be served upon respondent party and filed within 15 days after the respondent party first evidenced failure or refusal to comply with Section 11507.6 or within 30 days after request was made and the party has failed to reply to the request, or within another time provided by stipulation, whichever period is longer.

(c) The hearing on the motion to compel discovery shall be held within 15 days after the motion is made, or a later time that the administrative law judge may on the judge's own motion for good cause determine. The respondent party shall have the right to serve and file a written answer or other response to the motion before or at the time of the hearing.

(d) Where the matter sought to be discovered is under the custody or control of the respondent party and the respondent party asserts that the matter is not a discoverable matter under the provisions of Section 11507.6, or is privileged against disclosure under those provisions, the administrative law judge may order lodged with it matters provided in subdivision (b) of Section 915 of the Evidence Code and examine the matters in accordance with its provisions.

(e) The administrative law judge shall decide the case on the matters examined in camera, the papers filed by the parties, and such oral argument and additional evidence as the administrative law judge may allow.

(f) Unless otherwise stipulated by the parties, the administrative law judge shall no later than 15 days after the hearing make its order denying or granting the motion. The order shall be in writing setting forth the matters the moving party is entitled to discover under Section 11507.6. A copy of the order shall forthwith be served by mail by the administrative law judge upon the parties. Where the order grants the motion in whole or in part, the order shall not become effective until 10 days after the date the order is served. Where the order denies relief to the moving party, the order shall be effective on the date it is served.

DECLARATION OF SERVICE BY CERTIFIED MAIL AND FIRST CLASS MAIL

(Separate Mailings)

Case Name: **Tina Diane Metcalf**

No.: CC-2008-97

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On September 16, 2010, I served the attached **STATEMENT TO RESPONDENT, ACCUSATION, NOTICE OF DEFENSE (2 COPIES), REQUEST FOR DISCOVERY, GOVERNMENT CODE SECTIONS 11507, 11507.6, 11507.7** by placing a true copy thereof enclosed in a sealed envelope as certified mail with postage thereon fully prepaid and return receipt requested, and another true copy of the **STATEMENT TO RESPONDENT, ACCUSATION, NOTICE OF DEFENSE (2 COPIES), REQUEST FOR DISCOVERY, GOVERNMENT CODE SECTIONS 11507, 11507.6, 11507.7** was enclosed in a second sealed envelope as first class mail with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 300 South Spring Street, Suite 1702, Los Angeles, CA 90013, addressed as follows:

Tina Diane Metcalf
Optometrist
18649 Via Princessa
Santa Clarita, CA 91387

Certified Article Number

7160 3901 9848 8877 7418

SENDERS RECORD

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on September 16, 2010, at Los Angeles, California.

Gilda R. Sanchez

Declarant

Signature

7160 3901 9848 8877 7418

TO: Tina Diane Metcalf
18649 Via Princessa
Santa Clarita, CA 91387

SENDER: Michel W. Valentine

REFERENCE: LA2010600296

PS Form 3800, January 2005

RETURN RECEIPT SERVICE	Postage	
	Certified Fee	
	Return Receipt Fee	
	Restricted Delivery	
	Total Postage & Fees	

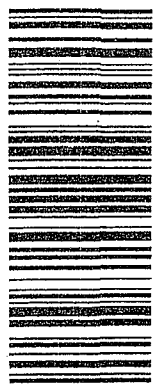
US Postal Service

**Receipt for
Certified Mail**

No Insurance Coverage Provided
Do Not Use for International Mail

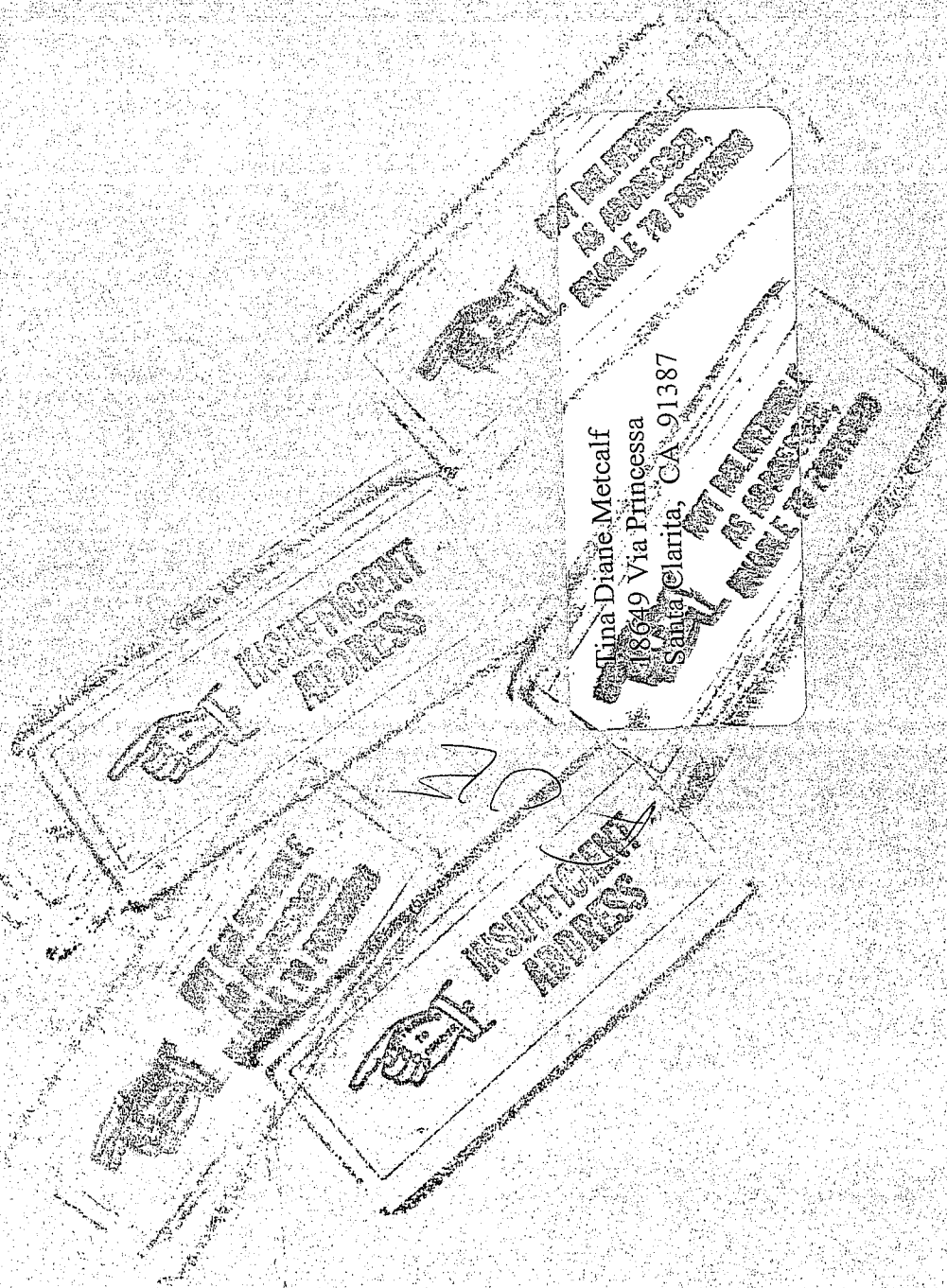
POSTMARK OR DATE

Michel W. Valentine
Office of the Attorney General
300 South Spring Street, Suite 1702
Los Angeles, CA 90013



7160 3901 9848 8877 7418

02 IN 505 19
000 1235953 SEP 13 2011
MAILED FROM ZIP CODE 50011



Tina Diane Metcalf
18649 Via Princessa
Santa Clarita, CA 91387

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly)	B. Date of Delivery
C. Signature: X	<input type="checkbox"/> Agent <input type="checkbox"/> Addressee
D. Is delivery address different from item 1? If YES, enter delivery address below:	
<input type="checkbox"/> Yes <input type="checkbox"/> No	

Thank you for using Return Receipt Service

2. Article Number



3. Service Type **CERTIFIED MAIL**

4. Restricted Delivery? (Extra Fee) ☐ Yes

1. Article Addressed to:

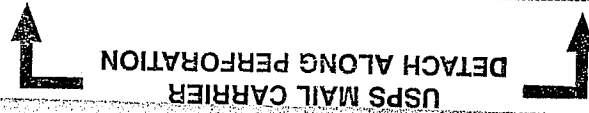
Tina Diane Metcalf
18649 Via Princesa
Santa Clarita, CA 91387

PS Form 3811, January 2005

Domestic Return Receipt

L42010600296

Michel W. Valentine



ATTORNEY GENERAL LOS ANGELES

2010 OCT -4 PM 5:10

RECEIVED

Attorney General
California Department of Justice
1800 Spring Street, Suite 1702
Sacramento, CA 95833

02 1M 00 01 2010
0004235353 SEP 13 2010
MAILED FROM ZIP CODE 90013

RECEIVED
OCT 13 2010
FBI - SAC, LOS ANGELES

Tina Diane Metcalf
18649 Via-Princessa
Santa Clarita, CA 91387

NO POSTAGE
NECESSARY
IF MAILED
IN THE UNITED STATES

Exhibit 2

License History Certification for Respondent



Board of Optometry
2420 Del Paso Road, Suite 255
Sacramento, CA 95834
Tel: (916) 575-7170
Fax: (916) 575-7292
www.optometry.ca.gov



CERTIFICATION

The undersigned, Mona Maggio hereby certifies as follows:

That she is the duly appointed, acting and qualified Executive Officer of the Board of Optometry of the State of California, and that in such capacity she has custody of the official records of said board.

On this eighth day of February 2010, the Executive Officer examined said official records of said Board of Optometry and found that **TINA DIANE METCALF** graduated from Southern California College of Optometry in 2001, and is the holder of Certificate of Registration to Practice Optometry No. 11705, which was granted to her effective August 1, 2001. On February 28, 2003, said Certificate of Registration expired due to non-payment of renewal fee, and was subsequently renewed on September 26, 2003. Said Certificate of Registration is currently in full force and effect and will expire February 28, 2011 unless renewed. The current address of record for said Certificate of Registration is 18649 Via Princessa, Santa Clarita, CA 91387.

Said records further reveal that on or about February 4, 2009, **TINA DIANE METCALF** became certified to utilize Therapeutic Pharmaceutical Agents and is authorized to diagnose and treat the conditions listed in subdivision (b), (d), and (e) of Section 3041. Said records further reveal that on or about February 4, 2009, **TINA DIANE METCALF** obtained approval to perform lacrimal irrigation and dilation.

Given under my hand and the seal of the State Board of Optometry, at Sacramento, California, this eighth day of February 2010.


Mona Maggio, Executive Officer

Exhibit 3

Certification of Costs

Cost of Suit Summary

As of Feb 8, 2011

MatterID: LA2010600296
Description: Metcalf, Tina Diane

Date Opened: Mar 16, 2010

Total Legal Costs: \$5,210.00
Cost of Suit: \$0.00
Grand Total: \$5,210.00

Rate	Hrs Wkcd	Amount
Matter Time Activity Summary		
Attorney		
2010-2011		
\$170.00	10.00	\$1,700.00
Total For:	2010-2011	\$1,700.00
2009-2010		
\$170.00	3.00	\$510.00
Total For:	2009-2010	\$510.00
Total for:	Attorney	\$2,210.00
Paralegal		
2010-2011		
\$120.00	3.50	\$420.00
Total For:	2010-2011	\$420.00
2009-2010		
\$120.00	21.50	\$2,580.00
Total For:	2009-2010	\$2,580.00
Total for:	Paralegal	\$3,000.00
Total Legal Costs		\$5,210.00

Entry No	Journal Date	Vendor #	Vendor	Schedule	Reference	Amount
Cost of Suit						
* Denotes soft costs which are not included in totals.						